IN THE

Supreme Court of the United States

OCTOBER TERM, 1958

No. 283

WESLEY GREENE,

Petitioner,

vs.

THE ART INSTITUTE OF CHICAGO, an Illinois corporation not for profit, and the NORTHERN TRUST COMPANY, a corporation, Trustee and Executor of the Estate of Benjamin F. Ferguson, deceased,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT.

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PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT.

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your Petitioner, Wesley Greene, prays that a Writ of Certiorari issue to The Appellate Court of Illinois, First District, to review a judgment of the Supreme Court of Illinois denying Petitioner's leave to appeal from The Appellate Court of Illinois, First District, entered May 20, 1958. The record in this case has been returned by the Supreme Court of Illinois to the Appellate Court of Illinois, First District.

CITATION TO OPINIONS BELOW.

The Supreme Court of Illinois did not write an opinion in its denial of Petitioner's leave to appeal from the judgment of the Appellate Court of Illinois. The opinion of the Appellate Court of Illinois, First District, is reported in 16 Ill. App. 2d 84, and is printed in Appendix A hereto, *infra*, pp. 1a-5a.

JURISDICTION.

The denial by the Supreme Court of Illinois of Petitioner's leave to appeal from the Appellate Court of Illinois, First District, was entered on May 20, 1958. Appendix D, *infra*, p. 7a. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(3). Appndix F, *infra*, p. 9a.

QUESTION PRESENTED.

Whether the State of Illinois, without contravening the due process clause of the Fourteenth Amendment to the United States Constitution, denied Petitioner, a contemplated beneficiary of a public charitable trust, his standing as an interested party in an action against the Respondents, trustees of a charitable trust, to vacate and set aside contrived orders of court, for restraining orders and other relief, under a common-law rule which directs that the Attorney General of Illinois has exclusive authority to represent the public in the construction or administration of a public charitable trust, when the cause of action by Petitioner charges that the decrees previously entered, in which the Attorney General of Illinois was named as the only necessary party defendant, were procured through the fraud and collusion of one of the Respondents and in which the Attorney General acquiesced, and repudiated the clear intent and language of the settlor of the public charitable trust.

CONSTITUTIONAL PROVISION INVOLVED.

The Constitutional provision involved in this Petition is Amendment XIV of the United States Constitution and that portion thereof which provides that "No State shall . . . deprive any person of life, liberty, or property, without due process of law." The pertinent portion of the Fourteenth Amendment is set out in Appendix E, *infra*, p. 9a.

STATEMENT.

On April 10, 1905 Benjamin F. Ferguson died a resident of Cook County, Illinois leaving a Last Will and Testament which included, as charged in the Complaint, the following provision:

> "My said Trustee after paying the bequests hereinabove mentioned and establishing or realizing and keeping in tact a permanent trust fund of not less than $1,000,000.00 shall annually thereafter or oftener, if required, pay the entire net income arising therefrom (after deducting its compensation as Trustee herein mentioned) to The Art Institute of Chicago, to be known as the B. F. Ferguson Monument Fund and entirely and exclusively used and expended by it under the direction of its Board of Trustees in the erection and maintenance of enduring statuary and monuments, in the whole or in part of stone, granite, or bronze, in the parks, along the boulevards, or in other public places within the City of Chicago, Illinois, commemorating worthy men or women of America, or important events in American History. The plans or designs for such statuary or monuments and the location of the same shall be determined by the Board of Trustees of such Institute." (Abst. 3).

On May 22, 1933 the Circuit Court of Cook County entered a decree in a case brought by Respondent, The Art Institute of Chicago, in which the court construed the word

"monument" as used in the paragraph of the Ferguson will, quoted above, to mean and include a memorial building. The building authorized by the 1933 decree was never constructed. In 1956 Respondent, The Art Institute of Chicago, brought another action in the Circuit Court of Cook County in which a decree was entered which authorized the construction of a memorial building at a designated site upon land owned by the Chicago Park District. (Abst. 7-11). In both the 1933 and 1956 cases the defendant named in the respective complaints was the Attorney General of Illinois. No other parties were named as defendants.

The building authorized to be erected by the 1956 decree is to be used by Respondent, The Art Institute of Chicago, and is constructed adjacent to the present building of The Art Institute of Chicago and for all practical purposes is an extension of its main building.

Respondent, The Northern Trust Company, was named testamentary trustee of the Last Will and Testament of Benjamin F. Ferguson and, as provided in the pertinent paragraph of the said Will, *supra,* p. 4, had the fiduciary duty of paying over the net income of the trust corpus in accordance with the directions of the Respondent, The Art Institute of Chicago. Respondent, The Northern Trust Company, did not join with The Art Institute of Chicago in either of the actions instituted in 1933 or 1956.

As alleged in Petitioner's Complaint the first notice he had of the 1933 and 1956 decrees was through newspaper articles and widespread publicity resulting from the announcement by Respondent, The Art Institute of Chicago, that it was to proceed with the construction of the Ferguson Memorial Building adjacent to it. (Abst. 3).

On April 10, 1957 Petitioner filed a Complaint in equity in the Superior Court of Cook County as a citizen, resident and taxpayer of the City of Chicago, on behalf of himself, and all citizens, residents and taxpayers of the said City similarly situated seeking, *inter alia*, an accounting by and substitution of Respondents as trustees of the trust created by Benjamin F. Ferguson and a setting aside of the two decrees entered in 1933 and 1956. (Abst. 1-5).

Petitioner alleged in his Complaint, *inter alia*, that the decree entered in 1933 was procured by the fraud and collusion of Respondent, The Art Institute of Chicago, and the Attorney General of Illinois; that Respondent, The Art Institute of Chicago, set out to capture and appropriate the Ferguson Monument Fund for its private use and gain in violation of its trust and contrary to the unambiguous language of the Last Will and Testament of B. F. Ferguson; that Respondent, The Art Institute of Chicago, through its agents and attorneys drafted its Complaint, the Answer of the Attorney General and the decree and order of court not only on the same typewriter, but also using the same "blue-backs" of counsel for The Art Institute; that the filing of the Complaint, the Answer of the Attorney General and the entry of the decree and order all took place *within the space of one hour;* that, contrary to the recitations in the decree of 1933, no oral testimony was taken and there was no argument by counsel; and that the Attorney General of Illinois was only a nominal party defendant and did not properly and adequately represent the interests of Petitioner and the general public. (Add. Abst. 6-17). The Complaint further alleged that Respondent, The Northern Trust Company, the testamentary trustee of the Ferguson Memorial Fund, acquiesced in the collusive and fraudulent conduct of The Art Institute of Chicago, by its inaction. (Add. Abst. 15-16).

For twenty-eight years the B. F. Ferguson Monument Fund was administered by Respondents under the terms of the Will and in accordance with the intent of its settlor. During this period the word "monument" was free of ambiguity. The Complaint of Petitioner amply charges that Respondent, The Art Institute of Chicago, was apparently of the persuasion that the funds of the trust, in excess of $1,000,000, could best commemorate American history by being lavished upon itself. The avarice of Respondent, The Art Institute of Chicago, could not be sated despite the following provision of the Last Will and Testament of Mr. Ferguson, as set forth in the Complaint (Add. Abst. 8):

> "My said Trustee shall further pay out of the income of my estate the sum of One Thousand Dollars per year to The Art Institute of Chicago, the same to be received and known as The B. F. Ferguson Annuity."

The federal question was presented in the complaint in the following language (Add. Abst. 7):

> "That by virtue of the aforesaid wrongful proceedings the defendant, The Art Institute Of Chicago, succeeded in capturing the entire B. F. Ferguson Monument Fund as accumulated, all of which was in violation of plaintiff's property rights in the said Fund; that by the acts alleged herein defendants violated plaintiff's rights of due process of law as guaranteed to him and others similarly situated, under Article II, paragraph 2, of the Illinois Constitution, and the Fifth and Fourteenth Amendments to the United States Constitutions;"

On April 22, 1957 the Respondents moved to dismiss Petitioner's complaint on the grounds, *inter alia*, that Petitioner did not have legal capacity to sue and the alleged cause of action was barred by a prior judgment; that the

complaint did not allege facts sufficient to justify the conclusion of Petitioner that he had a direct interest in the B. F. Ferguson Monument Fund or in its administration; that the complaint did not contain allegations sufficient to establish that Petitioner had been deprived of property without due process of law; that the allegations were vague, indefinite and uncertain and substantially insufficient at law and in equity and the complaint was based upon a misstatement and misunderstanding of the duties and authority of the Attorney General of Illinois. (Abst. 5-7, 11-12).

By an order entered in the Superior Court of Cook County on May 3, 1957 the separate motions of the Respondents to dismiss and strike the complaint were granted. (Abst. 13).

Petitioner then took an appeal to the Appellate Court of Illinois, First District, from the judgment of the Superior Court of Cook County. The Appellate Court affirmed the judgment of dismissal on January 15, 1958. This opinion is reprinted in Appendix A, *infra*, pp. 1a-6a, and was published in 16 Ill. App. 2d 84. The Appellate Court held that the Petitioner was properly represented by the Attorney General of Illinois in both 1933 and 1956; that the Attorney General of Illinois is the proper party to represent the public in actions involving charitable trusts; that as a member of the general public Petitioner did not have a property interest in the charitable trust; that Petitioner did not allege how he would be damaged as a taxpayer and hence did not come within the class of taxpayers who are damaged by the administration of a charitable trust; that sufficient facts were not alleged to show fraud in the actions of the Attorney General of Illinois; and there was no allegation of fraud which would warrant the considering of the complaint as a bill in the nature of a bill of review.

Petitioner's petition in the Appellate Court of Illinois, First District, praying for a rehearing in the cause was denied. Appendix C, *infra*, p. 8a. On May 20, 1958 the Supreme Court of Illinois denied Petitioner's petition for leave to appeal from the judgment of the Appellate Court, First District. Appendix D, *infra*, p. 9a.

The record in the case was returned by the Supreme Court of Illinois to the Appellate Court of Illinois, First District, which is the reason this Petition for a Writ of Certiorari prays that the Writ issue to the said Appellate Court.

REASONS FOR GRANTING WRIT.

It is clearly established that in Illinois upon a motion to dismiss a complaint, its well-pleaded allegations must be taken as true and all reasonable inferences drawn in favor of the plaintiff. *Espadron* v. *Davis*, 385 Ill. 304; *People* v. *Evans*, 412 Ill. 616. The Supreme Court in *Postal Telegraph Cable Co.* v. *Newport*, 247 U.S. 464, in a case arising out of the Kentucky state courts stated at p. 474, "Since the case proceeded to judgment upon the pleadings, it is elementary that every uncontradicted allegation of fact by the unsuccessful party must be taken as true." It is equally clear that one of the few grounds warranting a collateral attack on a decree entered for the purpose of defrauding a third person is fraud. *Atlas Nat. Bank* v. *More*, 152 Ill. 528; *Elting* v. *First Nat. Bank*, 173 Ill. 368; *Wing* v. *Little*, 267 Ill. 20; *People* v. *Chicago, Burlington Quincy RR. Co.*, 247 Ill. 340.

If it were conceded, *arguendo*, that the common-law rule in Illinois as enunciated by its courts would bar the Petitioner from bringing this action by the doctrine of *res judicata*, it does not follow that the Supreme Court of the

United States may not inquire into the rule if there is a violation of the Due Process Clause of the Fourteenth Amendment. *Postal Telegraph Cable Co.* v. *Newport, supra,* was a case in which the Supreme Court reviewed the procedure of the State of Kentucky involving the collection of certain state taxes and the Court stated at pp. 474-475 that "*Res judicata,* like other kinds of estoppel, ordinarily is a matter of state law, and as the decision of the state court in this case in effect rests upon that ground, this of itself would be sufficient to sustain the judgment against reversal in this court, except for two queries that must first be answered: (a) Is the question of state law in this case, independent of the federal questions? and (b) Is the decision reached upon that point sufficiently well founded to furnish adequate support for that judgment?"

The Illinois decisions, as expressed in the Appellate Court opinion below, Appendix A, appear to rest upon the syllogistic mesmerism of a rule which proceeds as follows: Only the Attorney General of Illinois may represent the general public in actions involving charitable trusts; this is an action involving a public charitable trust; Petitioner is not the Attorney General of Illinois; therefore, Petitioner may not bring this action and is bound by any previous decrees to which the Attorney General was a party. The rule thus announced precludes Petitioner's action even though in his Complaint he alleges the two previous decrees, obviously pre-arranged or contrived, were obtained fraudulently and the Attorney General gave only indifferent, token representation.

Thus, the Supreme Court of Illinois has sanctioned a rule of law which in effect immunizes both the Attorney General of Illinois and the trustees of a charitable trust

from a collateral attack once the trustees have succeeded in procuring a fraudulent decree by which the trustees capture the trust.

If the allegations in Petitioner's complaint are true, as they must be regarded upon a motion to dismiss, it is evident a gross wrong has been committed. A trustee of a charitable trust ought not to be permitted to convert trust funds committed to his care through a fraudulent and collusive decree to which the Attorney General was but a nominal and inadequate party. The State of Illinois provides no remedy to right this wrong. It is this failure of the State to provide an adequate remedy which Petitioner contends violates his property rights without due process of law under the Fourteenth Amendment to the United States Constitution.

It may also be conceded, *arguendo*, that under classical doctrine a member of the public does not have a property interest in a charitable trust as the Appellate Court so held in its decision. Appendix A, *infra*, p. 5a. The rule is one of convenience. It is to obviate a series of suits by members of the general public against trustees of a charitable trust. In the ordinary case of the administration of charitable trusts the rule is warranted. But the rule must be different when an attack is made upon a decree previously entered in which it is complained that it was procured by fraud and collusion.

It is obvious that the Petitioner and other citizens and taxpayers of the City of Chicago were intended and do stand to benefit under the terms of the testamentary trust created by B. F. Ferguson. One distinguished writer poses the question thus:

> "The courts do not give us a clear picture of their theories regarding the equitable property interest in

the cases of a charitable trust. Some courts state that equitable title to the trust *res* vests in the whole public or the class of the public to be benefited. Others seem to be of the opinion that the equitable interest vests in the private individuals selected as *cestuis* from time to time. . . . Or a court may take the position that strict property theories are relaxed in the case of a charitable trust, and that it is not necessary to find that the equitable title vests in any person or group at the commencement of the trust. It is evident that the courts, in their favorable treatment of charitable trusts, are not concerned with technical property concepts but rather are content with allocating to a competent party the power to enforce the charity." (Bogert, Trusts, 1953 ed., Vol. 2A, p. 282)

The issue raised in this Petition has never been decided by this Court. Due process of law has never been a phrase with an immutable content. "Due process of law thus conveys neither formal nor fixed nor narrow requirements. It is the compendious expression for all those rights which the courts must enforce because they are basic to our free society. . . . It is of the very nature of a free society to advance in its standards of what is deemed reasonable and right. . . . The real clue to the problem confronting the judiciary in the application of the Due Process Clause is not to ask where the line is once and for all to be drawn but to recognize that it is for the Court to draw it by the gradual and empiric process of 'inclusion and exclusion'". *Wolf* v. *Colorado*, 338 U.S. 25, 27. See also *Communications Comm'n.* v. *WJR*, 337 U.S. 265.

It is submitted by Petitioner that the Due Process clause of the Fourteenth Amendment does embrace within its ambit a rule permitting a private citizen to attack collaterally a former decree on the grounds of collusion and fraud in cases of public charitable trusts without being

barred by common-law stringencies turning on technical property concepts. A public charitable trust is for the benefit of the general public and thus is affected with a public interest with the general public as its contemplated and intended beneficiaries. "Courts of equity may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest than they are accustomed to go when only private interests are involved." *Virginia Ry.* v. *Federation*, 300 U.S. 515, 552. *Cf. Pennsylvania* v. *Williams*, 294 U.S. 176, 185.

Petitioner's complaint alleged that his first knowledge of the decrees entered in 1933 and 1956 was obtained from newspaper publicity attendant upon the announcement by The Art Institute of Chicago that it would proceed with the construction of the Memorial Building. (Abst. 3). At the time of the entry of the decrees Petitioner was given no notice of the pendency of the actions and, of course, was given no opportunity to be heard. "The action of state courts in imposing penalties or depriving parties of other substantive rights without providing adequate notice and opportunity to defend, has, of course, long been regarded as a denial of the due process of law guaranteed by the Fourteenth Amendment." *Shelley* v. *Kraemer*, 334 U.S. 1, 16; *Pennoyer* v. *Neff*, 95 U.S. 714. There is no question that a common-law rule enunciated by a state court may deny a citizen of due process of law as effectively as a state statute. *Shelley* v. *Kraemer*, *supra*, p. 16; *Erie R. Co.* v. *Tompkins*, 304 U.S. 64.

The complaint of Petitioner charges that the representation by the Attorney General of Illinois of the general public in the 1933 action instituted by Respondent, The Art Institute of Chicago, was inadequate, nominal and acquiescent. The complaint charges that the answer of

the Attorney General not only was drafted by the attorneys and agents of Respondent, The Art Institute of Chicago, but was typed on the same typewriter and "blue-backed" by the counsel for the said Respondent and, furthermore, the filing of the Complaint, the Answer and the entry of the decree and order of court took place *within a period of one hour.* (Abst. 4). No reasonable interpretation of the operative clause of the Last Will of Benjamin F. Ferguson warrants the conclusion he intended that the trustee he named to carry out the trust, Respondent, The Art Institute of Chicago, could appropriate the entire fund for its own purposes through the artifice of calling an administration building a "monument."

Hansberry v. *Lee*, 311 U.S. 32, involved a class or representative action instituted in the Circuit Court of Cook County seeking to enforce a restrictive covenant which provided that it should not be effective unless signed by ninety-five per cent of the owners in the area. To the defense that the agreement had never become effective because owners of ninety-five per cent of the frontage had not signed the agreement, the plaintiffs pleaded that that issue was *res judicata* by a decree in an earlier suit involving the same covenant. *Burke* v. *Kleiman*, 277 Ill. App. 519. The Circuit Court after a trial on the merits found that the owners of about fifty-four per cent of the frontage had signed the agreement and that the only support of the judgment in the *Burke* case, *supra*, was a false and fraudulent stipulation of the parties that ninety-five per cent of the owners had signed the agreement. Nonetheless, the Circuit Court ruled that the issue of the condition precedent to the validity of the agreement was *res judicata* and entered a decree for the plaintiffs. The Supreme Court of Illinois affirmed the Circuit Court, 372 Ill. 369, and the Supreme Court of the United States granted certiorari.

The Supreme Court of Illinois in *Hansberry* v. *Lee*, 372 Ill. 369, held that even though the finding in the previous action that ninety-five per cent of the owners had signed the agreement was erroneous the only way that it could be upset was by direct attack and for purposes of the case before it this was *res judicata*. The Supreme Court of the United States reversed and stated at 311 U.S. 40:

> "State courts are free to attach such descriptive labels to litigations before them as they may choose and to attribute to them such consequences as they think appropriate under state constitutions and laws, subject only to the requirements of the Constitution of the United States. But when the judgment of a state court, ascribing to the judgment of another court the binding force of *res judicata*, is challenged for want of due process it becomes the duty of this Court to examine the course of procedure in both litigations to ascertain whether the litigant whose rights have thus been adjudicated has been afforded such notice and opportunity to be heard as are requisite to the due process which the Constitution prescribes."

Despite the fact that *Hansberry* v. *Lee, supra*, was a class action and despite the holding of the Court that the interests of the litigants in the two actions were different, the policy underlying the holding announced in that case should, Petitioner respectfully urges, be applied to the present action.

Petitioner concedes that the common-law rules regarding the property interests of the general public in a charitable trust, the classical duty of the Attorney General to protect those interests, *res judicata* and collateral estoppel may militate against Petitioner's position. But Petitioner seeks to redress what it regards as a flagrant and contemptuous wrong committed against the general public of the State of Illinois by the fraudulent and collusive acts

of Respondent, The Art Institute of Chicago, and the feeble and *pro forma* representation of the Attorney General. The malleability of the common law, wherein lies its enormous strength, points to a yielding of its strictures to provide a remedy to right a wrong. This is the genius of the common law. This is the source of power from which this country derives its system of "ordered liberty."

CONCLUSION.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

LUIS KUTNER
Counsel for petitioner.

August 18, 1958.

APPENDIX A.

OPINION OF THE APPELLATE COURT.

MR. JUSTICE BRYANT DELIVERED THE OPINION OF THE COURT.

This is an appeal from an order of the Superior Court of Cook County dismissing upon motions filed by the defendants, The Art Institute of Chicago and the Northern Trust Company, the cause of action based on the complaint filed herein.

The motion of the defendant The Art Institute of Chicago, an Illinois corporation not for profit, sets forth as grounds for dismissal and striking the complaint that it appears on the face of the complaint that it is an illegal and unwarranted collateral attack upon final orders of the Circuit Court entered in case No. B269011 on May 22, 1933 and in case No. 55C-249 on June 13, 1956, and that the complaint does not allege facts sufficient to justify the conclusion that the plaintiff has a direct interest in the B. F. Ferguson Monument Fund or its administration, and that the complaint contains no allegation of facts sufficient to establish that the plaintiff has been deprived of property without due process of law, and that the allegations of the complaint are vague and indefinite, consist of conclusions and are based upon a misunderstanding of the law relating to the duties of the Attorney General of the State of Illinois. The motion of the defendant Northern Trust Company, a corporation, trustee, in addition to the above allegations, sets forth that the complaint does not allege any facts showing any misconduct of any kind on the part of the Northern Trust Company or any instance in which that defendant failed to perform its full

duties as trustee under the will of Benjamin F. Ferguson, deceased, and that the complaint fails to allege any co-operation or condonation or ratification by the Northern Trust Company of any alleged diversion of the B. F. Ferguson Monument Fund, or any alleged misconduct of The Art Institute of Chicago, or that it in any manner participated in the two court proceedings of which the plaintiff complains.

It therefore becomes necessary to examine the allegations of the complaint. The complaint states that it seeks to vacate and set aside an order of the Circuit Court of Cook County erroneously entered on May 22, 1933 in case No. B269011, and an order entered by the same court on June 13, 1956 in case No. 55C-249. It seeks a redetermination as to the meaning of the language used in the last will and testament of Benjamin F. Ferguson relating to the B. F. Ferguson Monument Fund, the purposes of the fund and the duties of The Art Institute of Chicago as trustee of the fund. It further seeks an order for the removal of the Northern Trust Company as trustee under the will of Benjamin F. Ferguson under which it was directed to turn over the net proceeds of certain funds in its hands each year to the Art Institute of Chicago as the trustee of the B. F. Ferguson Monument Fund.

The complaint also alleged that in case No. B269011 a hoax was perpetrated on the plaintiff, and other persons similarly situated, by The Art Institute of Chicago in that through its attorneys it caused to be filed in the Circuit Court of Cook County the complaint asking the instruction of the court in regard to the use of money from the B. F. Ferguson Monument Fund, which had been created for the purpose of "the erection and maintenance of enduring statuary and monuments," for the purpose of building a memorial building connected with the Art Institute of.

Chicago, and that an answer for the Attorney General of the State of Illinois, Hon. Otto Kerner, was filed on the same day as the complaint and apparently had been prepared on the same typewriter, using the same stationery and the same blue-back as used in the preparation of the complaint—all of which resulted in the entry of a decree on the same day in accordance with the prayer of the petition of that plaintiff, The Art Institute of Chicago, permitting the construction of a memorial building, as a monument to B. F. Ferguson, at a certain location adjoining and a part of The Art Institute of Chicago.

The complaint is replete with such words as "hoax," "fraudulent plan," and "collusive" and "fraudulent" actions, and while the plaintiff takes great pains to state that the Honorable Otto Kerner was a man of great integrity, honesty and esteem, he in the same breath inconsistently alleged that Mr. Kerner was subservient to the combined prestige of The Art Institute of Chicago and the Northern Trust Company of Chicago and allowed them to dominate and dictate the proceedings which were bottomed and conceived in fraud.

The complaint also alleges that in case No. 55C-249, The Art Institute of Chicago again asked instructions from the court and leave to construct a building such as had been approved in the decree of May 22, 1933 in the foregoing proceeding, at another location—still adjoining The Art Institute. The decree entered granted the prayer of The Art Institute of Chicago. The complaint alleged that the Attorney General of the State of Illinois, The Honorable Latham Castle, who was made a party defendant to the later proceeding because it related to a charitable trust, "permitted himself to ratify the scheme and hoax that was perpetrated in case No. B269011."

There are no other allegations of fraud in the complaint.

The plaintiff also alleges that he is a citizen, resident and taxpayer of the City of Chicago, County of Cook and State of Illinois, and that his taxes will be affected by the outcome of this law suit, but he does not allege how the building of the memorial building out of the funds of the B. F. Ferguson Monument Fund will affect his taxes. The plaintiff then sets forth that he, with others so situated, are intended beneficiaries of the B. F. Ferguson Monument Fund.

It is obvious that the order of the Superior Court dismissing the complaint is proper for the following reasons: (1) The plaintiff, as a member of the general public of the State of Illinois, was properly represented in both of the former proceedings by the Attorney General of the State of Illinois, who is the proper person to represent the public in actions relating to charitable trusts (*Art Institute of Chicago* v. *Castle*, 9 Ill. App. 2d 473; *Peo. ex rel. Courtney* v. *Wilson*, 327 Ill. App. 231; *Kolin* v. *Leitch*, 343 Ill. App. 622); (2) The plaintiff is not a proper party plaintiff, either as a beneficiary of the B. F. Ferguson Monument Fund or as a taxpayer; first, because he has been represented as a member of the public by the Attorney General in so far as the B. F. Ferguson Monument Fund is concerned as a charitable trust, and has no further right to representation (*Art Institute of Chicago* v. *Castle*, *Peo. ex rel. Courtney* v. *Wilson*, and *Kolin* v. *Leitch*, *supra;* Bogert, Trusts and Trustees Vol. 2a, sec. 414); secondly, he as a member of the public has no property interest in that trust (*Barker* v. *Hauberg*, 325 Ill. 538, 551; *Art Institute of Chicago* v. *Castle*, *supra*, at page 479; Scott, The Law of Trusts (1956 ed.) Vol. 4, Sec. 391, p. 2760); thirdly, he has not alleged how he would be damaged as a taxpayer, and therefore does not come within the class of taxpayers who are damaged by the administration of a charitable trust (*Hartzell* v. *Hungate*, 223 Ill. App. 346, 350; *Art Institute of Chicago* v. *Castle*,

supra; Pear v. *City of East St. Louis*, 273 Ill. 501, 506); (3) There is no sufficient allegation of *facts* to show fraud in the actions of the Attorney General of the State of Illinois (*Smith* v. *Board of Education*, 405 Ill. 143, 148; *Owens* v. *Green*, 409 Ill. 380, 38[illegible]; *Barker* v. *Hauberg*, 325 Ill. 538, 550; *Peo. ex rel. Parker* v. *Board of Appeals*, 367 Ill. 559, 567; *Peo. ex rel. Callahan* v. *G. M. & O. R. R. Co.*, 8 Ill. 2d 66, 70); and (4) There is no allegation of fraud which would warrant the considering of the complaint as a bill in the nature of a bill of review (*Art Institute of Chicago* v. *Castle*, *supra; Wood* v. *First Nat. Bank of Woodlawn*, 383 Ill. 515, 522.)

There is not before us at this time the question of the meaning of the words "statuary and monuments," but that phraseology has been passed upon finally by the lower courts and again considered in this court in *Art Institute of Chicago* v. *Castle*, 9 Ill. App. 2d 473, and certainly there is nothing in the interpretation of those words by the courts which *per se* would indicate anything but the proper consideration by reasonable minds and only just determination available.

It is noted that most of these same matters—indeed if not quite all of them, were before the court on the intervening petition of the National Sculpture Society in regard to the last decree, entered June 13, 1956 in case No. 55C-249, to which plaintiff objects, and that the bringing of this complaint is so clearly an attempt to litigate for the third time a matter which had been disposed of in the lower court and which has now been brought to the Appellate Court for the second time, that it can only be considered an attempt to stir up litigation in a manner which is just short of being maintenance.

JUDGMENT AFFIRMED.

BURKE, *P. J.* and FRIEND, *J.* Concur.
Publish in full.

APPENDIX B.

WESLEY GREENE, Appellant,		
No. 47268	vs.	
THE ART INSTITUTE OF CHICAGO, an Illinois corporation not-for-profit, and the Northern Trust Company, a corporation, Trustee and Executor of the Estate of Benjamin F. Ferguson, deceased, Appellee.		Appeal from Cook Superior

On this day came again the said parties, and the Court having diligently examined and inspected, as well the Record and proceedings aforesaid, as the matters and things therein assigned for Error, and being now sufficiently advised of and concerning the premises, for that it appears to the Court now here, that neither in the Record and proceedings aforesaid, nor in the rendition of the judgment aforesaid, is there anything erroneous, vicious, or defective, and that in that Record there is no Error: Therefore, it is considered by the Court that the judgment aforesaid be Affirmed in all things, and stand in Full Force and Effect, notwithstanding the said matters and things therein assigned for Error.

And it is further considered by the Court that the said The Art Institute of Chicago, Certain Appellee, recover of and from the said Appellant its costs, by it in this behalf expended, to be taxed, and that it have execution therefor.

And it is further considered by the Court that the said The Northern Trust Company, as Trustee under the Will of Benjamin F. Ferguson, Deceased, Certain Appellee, recover of and from the said Appellant its costs, by it in this behalf expended, to be taxed, and that it have execution therefor.

Dated: January 15, 1958

APPENDIX C.

Wesley Greene, Appellant
47268 vs.
The Art Institute of Chicago, et al., etc., Appellees
} Appeal from Cook Superior
Error to

The Court having considered the petition of Appellant praying for a rehearing in said cause, and being now fully advised in the premises, doth order that the prayer of said petition be and the same is hereby denied.

Dated: January 30, 1958.

APPENDIX D.

UNITED STATES OF AMERICA

State of Illinois } ss.
Supreme Court }

At a Term of the Supreme Court, begun and held in Springfield, on Monday, the twelfth day of May in the year of our Lord, one thousand nine hundred and fifty-eight, within and for the State of Illinois.

[Here are listed the Justices present.]

Be It Remembered, that, to-wit: on the 20th day of May 1958, the same being one of the days of the term of Court aforesaid, the following proceedings were, by said Court, had and entered of record, to-wit:

Wesley Greene,
Petitioner
No. 34802 vs.
The Art Institute of Chicago, an Illinois corporation not for profit, and the Northern Trust Company, a corporation, Trustee and Executor of the Estate of Benjamin F. Ferguson, Deceased,
Respondents

Petition for Leave to Appeal from Appellate Court
First District
57 S 5405
47268

And now on this day the Court having duly considered the Petition for Leave to Appeal herein as well as the record and abstract, filed in support thereof, and being now fully advised of and concerning the premises, doth overrule the prayer of the petition and denies Leave to Appeal herein.

And it is further considered by the Court that the said Respondents recover of and from the said Petitioner costs by them in this behalf expended, to be taxed, and that they have execution therefor.

I, Mrs. Earle Benjamin Searey, Clerk of the Supreme Court of the State of Illinois and keeper of the records, files and Seal thereof, do hereby certify that the foregoing is a true copy of the final order of the said Supreme Court in the above entitled cause of record in my office.

In Witness Whereof, I have hereunto subscribed my name and affixed the Seal of said court this 26th day of May, 1958.

Mrs. Earle Benjamin Searey Clerk
Supreme Court of the State of Illinois

(Seal)

APPENDIX E.

Amendment XIV
United States Constitution

Section. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX F.

28 U.S.C. Section 1257(3):

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows: . . .

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States. June 25, 1948, c. 646, 62 Stat. 929.